

Message Text

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ACTION L-03

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 3702

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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E.O.11652: N/A

TAGS: CGEN, PFOR, BR (CAGE, BEN JACK)

SUBJECT: EXTRADITION - BEN JACK CAGE

REF: (A) STATE 005356, (B) 75 SAO PAULO 2683,

EMBOFFS HAVE INFORMALLY DISCUSSED THE CAGE CASE (REFTEL) WITH AN OFFICIAL OF THE CONSULAR AND JURIDICAL DEPARTMENT OF THE FOREIGN MINISTRY (DILERMANDO). OUR PRELIMINARY CONCLUSIONS, BASED ON THAT DISCUSSION AND SUBSEQUENT RESEARCH, ARE AS FOLLOWS:

1. ALTHOUGH FILES ON THE CASE NO LONGER EXIST AT THE EMBASSY, RESEARCH ON THE SUBJECT HAS REVEALED THAT THE REQUEST FOR EXTRADITION

OF CAGE WAS NEVER SUBMITTED TO THE BRAZILIAN SUPREME COURT BY THE GOB, AS REQUIRED BY BRAZILIAN LAW. THE 1966 DENIAL OF EXTRADITION CAME AT THE SOLE INITIATIVE OF THE MINISTRY OF JUSTICE, AND WAS TRANSMITTED TO THE EMBASSY BY THE MINISTRY OF FOREIGN AFFAIRS. IN VIEW OF THIS, THERE ARE THREE POSSIBILITIES FOR BRINGING CAGE BACK TO THE U.S.:

(A) A NEW EXTRADITION REQUEST. BRAZILIAN LAW STATES THAT ONLY THE SUPREME COURT IS COMPETENT TO DENY OR GRANT EXTRADITION. THEREFORE, TECHNICALLY SPEAKING, A NEW REQUEST CAN BE SUBMITTED WITH REASONABLY GOOD CHANCES OF SUCCESS, IF THE SUPREME COURT GIVES APPROPRIATE WEIGHT TO THE LEGAL PROVISION THAT CAGE'S BRAZILIAN NATURALIZATION IS

NO
BAR TO EXTRADITION BECAUSE IT BECAME EFFECTIVE AFTER HE HAD
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COMMITTED THE EXTRADITABLE ACT AND THAT THE NEW REQUEST IS WITHIN THE

LIMITS OF ARTICLE 5, ITEM 3, OF THE BRAZIL-U.S.
EXTRADITION TREATY (STATUTE OF LIMITATIONS).

(B) OBLIGATORY DEPARTURE OF CAGE FROM BRAZIL PURSUANT TO ADMINISTRATIVE

ANNULMENT OF HIS NATURALIZATION. THIS WOULD BE POSSIBLE IF IT COULD BE PROVEN THAT HIS NATURALIZATION WAS OBTAINED FRAUDULENTLY. THE HEAD OF THE DEPARTMENT OF JUSTICE OF THE MINISTRY OF JUSTICE (BARCELOS) PRIVATELY ADMITTED TO AN EMBASSY OFFICER THAT HE HAS FOUND SOME IRREGULARITIES IN CAGE'S NATURALIZATION PROCESS, AND THAT HE WOULD BE WILLING TO REVIEW CAGE'S NATURALIZATION IF HE WERE REQUESTED TO DO SO.

(C) OBLIGATORY DEPARTURE PURSUANT TO CANCELLATION OF CAGE'S NATURALIZATION. THIS WOULD ALSO BE POSSIBLE, BUT WOULD BE MORE COMPLICATED SINCE IT WOULD HAVE TO BE DONE JUDICIALLY. BRAZILIAN LAW STATES THAT A BRAZILIAN NATURALIZED CITIZEN MAY HAVE HIS NATURALIZATION CANCELLED IF HE HAS CARRIED OUT "HARMFUL ACTIONS AGAINST THE NATIONAL INTERESTS". THE PROCESS CAN BE INITIATED EITHER BY THE MINISTER OF JUSTICE OR BY ANY OTHER PERSON. SINCE CAGE IS NOW REPORTEDLY BEING CHARGED OF SMUGGLING FIREARMS INTO BRAZIL (A NATIONAL SECURITY OFFENSE), THE MINISTRY OF JUSTICE AND THE MILITARY AUTHORITIES MIGHT NOW BE MORE AMENABLE TO INITIATING ACTION SEEKING THE ANNULMENT OR CANCELLATION OF HIS NATURALIZATION.

2. SINCE BRAZILIAN NATIONALS CANNOT BE LEGALLY EXPELLED, CAGE'S FORMAL EXPULSION WOULD ONLY BE POSSIBLE IF HIS NATURALIZATION WERE ANNULLED AB INITIO, AND IF HE DID NOT HAVE A BRAZILIAN WIFE OR CHILD. INFORMATION AVAILABLE INDICATES THAT HE DOES HAVE A BRAZILIAN CHILD. IF CAGE'S NATURALIZATION WERE EITHER ANNULLED OR CANCELLED, HOWEVER, HE WOULD BE REQUIRED TO LEAVE BRAZIL WITHIN BRIEF PERIOD, NOTWITHSTANDING FOREGOING LIMITATIONS.

3. DILERMANDO STATED THAT HE COULD NOT PREDICT WHAT THE GOB'S REACTION WOULD BE AS A POLITICAL MATTER TO A NEW REQUEST FOR EXTRADITION SINCE THIS QUESTION COULD ONLY BE ANSWERED AT A HIGHER LEVEL IN THE MINISTRIES OF JUSTICE AND FOREIGN AFFAIRS. HE WAS OF THE OPINION, HOWEVER, THAT TECHNICALLY SPEAKING, A NEW REQUEST WOULD BE LEGITIMATE AND APPROPRIATE. IN VIEW OF THE FOREGOING, AND UNLESS THE DEPARTMENT PERCEIVES SOME OBJECTION, THE EMBASSY PROPOSES TO EXPLORE WITH BARCELOS, LIMITED OFFICIAL USE

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OR COMPARABLE LEVEL OFFICIAL OF JUSTICE MINISTRY, THE POSSIBILITIES OUTLINED IN PARAS 1(B) AND 1(C) ABOVE, WHICH AT THIS POINT SEEM TO BE THE OPTIONS MOST DESIRABLE AND FEASIBLE. AT THE SAME TIME, WE WILL CONTINUE TO MAKE INFORMAL SOUNDINGS WITH BRAZILIAN AUTHORITIES AT HIGHER LEVELS TO DETERMINE HOW GOB MIGHT REACT TO A NEW EXTRADITION REQUEST.

4. ACTION REQUESTED: ON JANUARY 30, EMBASSY RECEIVED TELEPHONIC

INQUIRY FROM DALLAS TIME HERALD RE CAGE ABOUT PROSPECTIVE U.S. EXTRADITION REQUEST. CALLER WAS INFORMED THAT WE HAD NO INFORMATION BEYOND FACT THAT LOCAL PAPERS HAD REPORTED CAGE'S ARREST IN SAO PAULO. EMBASSY EXPECTS TO RECEIVE FURTHER INQUIRES AND MAY BE PRESSED TO COMMENT ON CAGE'S NATIONALITY, SINCE QUITE APART FROM EXTRADITION QUESTION, WE WOULD NORMALLY BECOME INVOLVED IN ARREST CASE IF CAGE WERE A U.S. CITIZEN. EMBASSY CONCURS CONCLUSION CONTAINED PARAGRAPH 4, REFTEL B, AND, IN ABSENCE OF OBJECTION FROM DEPARTMENT, WILL TAKE POSITION THAT CAGE IS A BRAZILIAN CITIZEN, HAVING LOST HIS U.S. CITIZENSHIP BY NATURALIZATION IN A FOREIGN STATE. HOWEVER, DEPARTMENT IS REQUESTED TO VERIFY WHETHER OR NOT CERTIFICATE OF LOSS OF NATIONALITY WAS EVER SUBMITTED ON CAGE. EMBASSY WOULD ALSO WELCOME DEPARTMENT'S COMMENTS AS TO WHETHER, IN ANY EVENT, CAGE'S CLAIM TO CITIZENSHIP STANDS ANY CHANCE OF BEING LEGALLY RESUSCITATED IF BRAZIL ANNULS HIS NATURALIZATION AB INITIO. CRIMMINS

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